

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 314 of 2007(K)

PETITIONER:

**MUJEEB RAHMAN M.P., S/O. MARAKKAR,
AGED 27, MANAKKAPADIKKAL HOUSE,
VELIANKODE P.O., MALAPPURAM DISTRICT.**

**BY ADV. SRI.K.I.ABDUL RASHEED
SMT.K.N.VIGY**

RESPONDENTS:

- 1. STATE OF KERALA, REP. BY
SECRETARY TO GOVT., HOME DEPARTMENT,
GOVT. SECRETARIAT, TRIVANDRUM.**
- 2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.**
- 3. ADDITIONAL DIRECTOR GENERAL OF POLICE,
A.P.BATTALION, THIRUVANANTHAPURAM.**
- 4. THE COMMANDANT,
K.A.P. 4TH BATTALION, MANGATTUPARAMBU,
KANNUR.**

BY GOVT. PLEADER SHRI.P.NANDAKUMAR.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.K.DENESAN, J.

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WP(C) .No.314 OF 2007-K.

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Dated this the 30th day of March, 2007.

J U D G M E N T

The petitioner was sponsored by the District Employment Officer, Kannur on requisition made by the 4th respondent for appointment to the post of Driver Police Constable. Against the vacancies then available, an interview was held on 18-12-2004 and a select list was prepared. It is not disputed that the petitioner's name finds a place among the selected candidates and the 4th respondent took up for consideration the question of appointing the selected candidates and sending them for training. Though others who had been selected, were sent up for training, the petitioner was not included in the list of candidates sent up for training.

2. Memorandum dated 16-2-2005 shows that, on verification of the character and antecedents, it was

found that the petitioner was implicated as accused in Crime No.216/2001 of Perumpadappu Police Station, and therefore, the Government was of the view that the petitioner was not suitable for appointment to public service. Feeling aggrieved, the petitioner has approached this Court and has sought for directions to send him up for training and to appoint him as Driver Police Constable. This Court passed Ext.P5 interim order in the following terms:-

"The respondents shall permit the petitioner to report for training scheduled to be commence next. He will be permitted to undergo training subject to the conditions regarding discipline and other rules mentioned therein. Successful completion of the training will not ip so facto give him right to posting as Police Constable without further orders from this court. Whatever amounts spent for giving training to the petitioner will be refunded by him in case he is ultimately found ineligible. He will execute a bond to the effect that in case he is not entitled for appointment, he shall repay the amounts expended for him. He need be admitted for duty only after execution of bond and to that too if he is not otherwise disqualified."

3. The petitioner was admitted for the training. He successfully underwent the training as is evident

from Ext.P6 proceedings of the Training Director issued on 1-12-2006. Thereafter, decision was taken to appoint him as Driver Police Constable which fact is evident from Ext.P7 proceedings of the Officiating Commandant, KAP dated 29-12-2006. He joined duty as Driver Police Constable on 10-12-2006. While so, Ext.P7 proceedings dated 29-12-2006 was passed by the 4th respondent provisionally discharging the petitioner from service with effect from 10-12-2006. The operative part of Ext.P7 reads:

"Since the final orders of the Hon'ble High Court on the WP(C) filed by Sri.Mujeeb Rehiman is not issued so far, he cannot be appointed as Driver PC in this Bn. Hence Sri.Mujeeb Rehiman Rt.Driver PC 1870 is provisionally discharged from service w.e.f. 10-12-2006. His re-admission to the service will be subject to the final orders of the Hon'ble High Court of Kerala on the writ petition filed by him."

4. Ext.P7 is challenged.

5. Heard both sides.

6. The Crime case registered against the petitioner was charge sheeted and the petitioner faced the ordeal of trial. The trial court found him guilty

and convicted him. But no sentence was awarded. The petitioner preferred appeal before the Court of Sessions, Manjeri. As per Ext.P8 judgment dated 20-2-2007 passed in Criminal Appeal No.337/2005, the learned Sessions Judge reversed the order of conviction passed by the trial court, set aside the judgment and acquitted the petitioner under Section 258 of the Cr.P.C. In para.12 of Ext.P8 judgment, the learned Sessions Judge observed that the trial court has taken a prejudicial view and that the petitioner was found guilty without any legal or acceptable or reliable evidence.

7. Counsel for the petitioner submits that in the light of Ext.P8 judgment the respondents have got a duty to reinstate the petitioner in service and to allow him to work as Driver Police Constable. It is also contended that the respondents shall permit the petitioner to enjoy the benefits of continuity in service with attendant rights.

8. Government pleader submits that the petitioner was not permitted to undergo the training since the

Government had formed adverse opinion against the petitioner as empowered under Rule 10(b)(iii) of K.S. & S.S.R. The Government was not satisfied about the character and antecedents of the petitioner as matters stood then.

9. Counsel for the petitioner submits that the only reason for the Government to entertain such a feeling was the crime case pending against the petitioner and now that the Court of Sessions has found him not guilty and has acquitted him, the State Government has got a duty to review the opinion earlier formed so as to clear the candidature of the petitioner for appointment to the post of Driver Police Constable and to issue directions to the 4th respondent to post the petitioner and permit him to work as Driver Police Constable.

10. I am of the view that there is substance in the contention of the learned counsel for the petitioner. Ext.P8 judgment has already been brought to the notice of the Government. Request has been made by the petitioner vide Ext.P9 representation to give

clearance and to take steps to re-appoint him as Driver Police Constable.

11. In the light of the observations made by the Court of Sessions in Ext.P8 judgment and the order of acquittal passed by that Court, the State Government shall consider once again the the case of the petitioner regarding his character and antecedents and pass appropriate orders on Ext.P9. If the only reason for forming the adverse opinion was the then pending crime case, Ext.P8 judgment of the Court of the Sessions is a relevant material to review the earlier decision of the Government. If any other reason had weighed with the Government in forming the opinion under Rule 10(b)(iii) of K.S. & S.S.R., the same can be taken into consideration while passing fresh orders.

12. Since the petitioner is out of employment, despite his satisfactorily completing the period of training, the first respondent shall consider Ext.P9 as directed above, as early as possible, in any event within one month from the date of receipt of a copy of this judgment. If the Government decides to clear the

candidature of the petitioner, appropriate directions shall be issued to the 4th respondent to permit the petitioner to join duty, and in that event, he shall also be granted the benefit of continuity of service with consequential benefits.

The Writ petition is disposed of as above.

K.K.DENESAN, JUDGE.

kvs/-